

# Order

Michigan Supreme Court  
Lansing, Michigan

December 7, 2011

Robert P. Young, Jr.,  
Chief Justice

143798 & (14)(15)

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

DEPARTMENT OF CIVIL RIGHTS, *ex rel*  
BELINDA ROBBINS, Next Friend of SANG  
WOO ROBBINS,  
Plaintiff-Appellee,

v

MICHIGAN HIGH SCHOOL ATHLETIC  
ASSOCIATION,  
Defendant-Appellant.

SC: 143798  
COA: 305894  
Lenawee CC: 11-004141-CZ

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the September 21, 2011 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted of whether the trial court abused its discretion by granting plaintiff's motion for a preliminary injunction, *Freeman v Mitchell*, 198 Mich 207, 210 (1917), after considering de novo the following threshold issues: (1) whether the Michigan High School Athletic Association (MHSAA) is a "state actor" for purposes of the Fourteenth Amendment and 42 USC § 1983, see *Brentwood Academy v Tennessee Secondary School Athletic Ass'n*, 531 US 288, 303 (2001); (2) whether, under the Elliott-Larsen Civil Rights Act, MCL 37.2101, *et seq.*, the MHSAA provides a "public service" or constitutes a "place of public accommodation," MCL 37.2301; and (3) whether the MHSAA's rules categorize persons on the basis of an inherently suspect characteristic or jeopardize the exercise of a fundamental right; and if not, whether there is a rational basis for the MHSAA's rules. See generally, *Nordlinger v Hahn*, 505 US 1, 10 (1992). The motion for stay is DENIED.

We do not retain jurisdiction.

MARILYN KELLY and HATHAWAY, JJ., would deny leave to appeal.



h1130

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 7, 2011

*Corbin R. Davis*

Clerk